



HUMAN RIGHTS COMMISSION

CHARGE NO.: 1998 SF 0804
EEOC NO.: 21B 982393
ALS NO.: 10805

This matter is before me on Complainant's Motion for Attorney's Fees, filed on February 26, 2003, which was submitted after the entry of a Recommended Liability Determination (RLD) on January 2, 2003. In the RLD, it is recommended that Complainant be given back pay in the amount of \$42,379.88 (plus interest) and \$5,000.00 for the emotional distress caused by the retaliatory behavior of Respondent; other elements of the award are found in the RLD which is appended to this Recommended Order and Decision. The recommended award also includes the payment of "reasonable attorney's fees and costs incurred" in this case. This Recommended Order and Decision incorporates the RLD in its entirety as the recommendation on the merits of the case and will add my recommendation for the amount of attorney's fees and costs to be awarded to Complainant.

1. Complainant, Alfred Brown, is entitled to attorney's fees and costs in accord with the RLD entered in this case on January 2, 2003.

2. Bruce M. Bozich, Complainant's counsel, is an experienced attorney who practices in the Chicago area. Mr. Bozich was admitted to practice in Illinois in 1977. He is in the private practice of law specializing in employment law, labor law, personal injury, medical malpractice and worker compensation matters.

3. A reasonable hourly rate for an attorney of Mr. Bozich's experience is \$275.00 per hour.

4. Mr. Bozich prosecuted this case by himself and is not requesting fees for any other attorney.

5. Mr. Bozich reasonably expended 132.32 hours at the rate of \$275 per hour in representing Complainant before the Commission in this matter. Further, Mr. Bozich reasonably expended the amount of \$61.48 on other expenses associated with the prosecution of this case.

Conclusions of Law

1. The petition for attorney's fees is granted in part and denied in part.
2. No hearing is necessary to determine a reasonable attorney's fee award in this case.
3. The RLD previously issued in this case is adopted in its entirety, including all elements of the recommended award.

Discussion

In considering petitions for the award of attorney's fees and costs, the Commission requires that any award be fair and reasonable. The most common measure of fees remains the charging of a set rate per hour for work performed in consideration of the client's matter at hand,

and multiplying that figure by the number of hours expended. This is particularly useful when a fee award such as that for this case is being considered because it gives the Commission an opportunity to be informed of the actual work devoted by the attorney to the case. The standard for determining the proper fee award by the Commission is found in Clark and Champaign National Bank, 4 Ill. HRC Rep. 193 (1982).

Respondent first objects to the hourly rate of \$300.00 for Mr. Bozich suggested in the Motion in that \$250.00 is the highest hourly rate previously awarded by the Commission. Instead, an award of \$200.00 per hour is suggested by Respondent. Mr. Bozich has been a licensed attorney in Illinois since 1977. He has represented both employers and employees in cases before the Commission and he is in a private practice that generally concentrates on matters that relate to individuals in disputes with employers, medical practitioners and others. Historically, the Commission has shown that it is willing to increase the level of hourly rates for attorneys from time-to-time. It has now been several years since the \$250.00 level was first recognized and now would be an appropriate time to acknowledge a further increase in the upper range of hourly rates. However, an increase to \$300.00 would be too precipitous. Therefore, I find that \$275.00 per hour is an appropriate hourly rate for Mr. Bozich in light of his level of experience and the current community standard for attorney's with a similar background.

Respondent further notes that Complainant was not successful in this case on all claims in the complaint. In the RLD, it was found that Complainant did not suffer harassment due to his race as alleged but that Respondent did retaliate against him for his objection to conduct that he reasonably believed to be discriminatory. Respondent maintains that a 75% reduction in the hours claimed by Complainant's counsel is appropriate here because: 1) Complainant prevailed on only one of two claims, requiring a 50% reduction; and, 2) most of Complainant's

presentation at the public hearing was devoted to the racial harassment claim, justifying a further 25% reduction. Respondent cites Hudson and Rothschild Liquors, Ill. H.R.C. Rep. (1985CF2266, April 5, 1994) and Johnson and Stoller & Maurer Construction Co., 25 I. H.R.C. Rep. 268 (1986). However, upon closer examination, these cases do not support the assertions of Respondent.

First, the nature of the alleged racial harassment is significant to the outcome of this case, even though it was not sustained as a separate violation of the Human Rights Act. The first element of the *prima facie* case for retaliation requires that the Complainant engage in a protected activity. Maye v. Illinois Human Rights Comm'n, 224 Ill.App.3d 353, 360, 586 N.E.2d 550, 166 Ill.Dec. 592 (1st Dist. 1991). Where this element is contested, a complainant must show that his or her belief that the activity was protected under the Act must be reasonable and in good faith. Human Rights Act, Section 6-101(A). Generally, where a companion racial harassment count is found to be not sustained, a respondent will most often dispute the first element of the retaliation *prima facie* case by asserting that because actionable racial harassment was not found, the complainant's alleged protected activity was not reasonable and in good faith. But in this case, Respondent conceded that Complainant established this first element. Respondent's Post-Hearing Brief at 16 (cited in Recommended Liability Decision at 6). This leads to the conclusion that Complainant was so successful in presenting evidence at the public hearing about the alleged racial harassment that even though the count was not sustained, Respondent was unable to attack in any manner Complainant's reasonable and good faith belief that he was engaged in a protected activity when he submitted his written complaint to management on December 9, 1997. This establishes that Complainant's efforts with regard to the racial harassment count were not in vain and that they did have a substantive effect on the final outcome of the liability and damages portions of the public hearing. Respondent's assertion

that the fee request should be reduced by 75% is without merit and Complainant will be given credit for all hours claimed and not otherwise stricken.

In its response to the motion for fees and costs, Respondent did not object to any specific line item or class of activities in the itemized invoice attached by Complainant's counsel to the Motion other than the global objection that is rejected above. Upon examination of the invoice, I find that no listed task is unreasonably included and that all of the activities were properly performed by the attorney. Further, although it appears that Complainant's counsel utilized the convention of rounding his hours to the nearest quarter-hour, the overall potential distortion on the total number of hours is minimal and will not be recalculated. *See Rhodes and Jones-Blythe Construction Company*, 23 Ill. H.R.C. Rep. 289, 311-13 (1986) (permitting such rounding) and, *contra*, *Moore and City of Mt. Vernon*, Ill. H.R.C. Rep. (1982SF0153, June 29, 1995; *affirming recommended decisions entered April 30, 1984 and February 8, 1985*) (striking such rounding). Complainant's request for his attorney's fee is granted in part and denied in part. The recommended award will be for 132.32 hours payable at the rate of \$275.00 per hour, a total of \$36,388.00.

Finally, Complainant also requests reimbursement for costs in the amount of \$123.94. Respondent objects to expenses listed "for messenger service, filing service and FAX expenses totaling \$62.46." While Complainant was disinclined to defend these charges, I must note that the Commission generally does not approve charges for these expenses in the absence of specific evidence that other clients of the attorney are routinely charged for them. The Commission assumes that the three categories of charges objected to by Respondent to be a part of the normal overhead of operating a law office. Therefore, Respondent's objection to these charges will be sustained and the amount of expenses recommended for payment to Complainant will be \$61.48.

Recommendation

Based on the foregoing, it is recommended that an order be entered awarding the following relief to Complainant:

- A. That Respondent be ordered to pay to Bruce M. Bozich the amount of \$36,388.00 as attorney's fees and \$61.48 for costs, a total of \$36,449.48; and,
- B. That Complainant receives all other relief recommended in the Recommended Liability Determination entered in this matter on January 2, 2003.

ENTERED:

June 23, 2003

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

Service List for Brown #10805 as of June 23, 2003:

Bruce M. Bozich
Bozich & Beran
11800 South 75th Avenue
Palos Heights, Illinois 60463

Peter K. Newman
Greenebaum, Doll & McDonald
255 East Fifth Avenue
2800 Chemed Center
Cincinnati, Ohio 45202-4728

Office of the General Counsel
Illinois Department of Human Rights
100 West Randolph Street
Suite 10-100
Chicago, Illinois 60601